

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pacific Empire Radio Corporation)	File No.: EB-FIELDWR-12-00002389
)	NAL/Acct. No.: 201232920001
Licensee of:)	FRN: 0006196612
Station KLBM, La Grande, Oregon)	Facility ID Nos.: 35047
Station KBKR, Baker, Oregon)	24794
Station KUBQ, La Grande, Oregon)	24796
Station KKBC-FM, Baker, Oregon)	24795
Station KRJT, Elgin, Oregon)	164224
)	

FORFEITURE ORDER

Adopted: February 6, 2014

Released: February 7, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty-five thousand dollars (\$25,000) to Pacific Empire Radio Corporation (Pacific Empire), licensee of Station KLBM, La Grande, Oregon, Station KBKR, Baker, Oregon, Station KUBQ, La Grande, Oregon, Station KKBC-FM, Baker, Oregon and Station KRJT, Elgin, Oregon (collectively, the Stations), for willfully and repeatedly violating Section 73.3526(e)(12) of the Commission's rules (Rules).¹ The noted violation involved Pacific Empire's failure to retain multiple issues and programs lists in the local public inspection file for each of the Stations.

II. BACKGROUND

2. On May 22, 2012, the Enforcement Bureau's Portland Resident Agent Office (Portland Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL) for twenty-five thousand dollars (\$25,000) to Pacific Empire for failing to comply with the public file requirements for all five Stations.² In response to the NAL, Pacific Empire does not deny the violations, but requests cancellation or reduction because the FCC has allegedly never complied with its obligations under the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA),³ and because the proposed forfeiture is allegedly excessive when viewed in light of forfeitures for other public file violations and the relative insignificance of the violation.⁴

¹ 47 C.F.R. § 73.3526(e)(12).

² *Pacific Empire Radio Corporation*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 5306 (Enf. Bur. 2012) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ P.L. 104-121, March 29, 1996, as amended by P.L. May 25, 2007.

⁴ See Response of Pacific Empire Radio Corporation to Portland Resident Agent Office, Western Region, Enforcement Bureau (Jun. 15, 2012) (on file in EB-FIELDWR-12-00002389) (NAL Response).

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁵ Section 1.80 of the Rules,⁶ and the *Forfeiture Policy Statement*.⁷ In examining Pacific Empire's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

4. We affirm the *NAL*'s finding that Pacific Empire violated Section 73.3526(e)(12) of the Rules.⁹ Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection a file containing materials listed in that section.¹⁰ Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours,¹¹ and Section 73.3526(e)(12) of the Rules specifically requires licensees to place in their public inspection file each calendar quarter a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period (known as the issues/programs list).¹² The issues/programs lists must include "a brief narrative describing what issues were given significant treatment and the programming that provided this treatment," including, but not limited to, the time, date, duration, and title of each program in which the issue was treated.¹³ Copies of the issues/programs list must be retained in the public inspection file until final action has been taken on the station's next license renewal application.¹⁴

5. As reflected in the *NAL*, during an inspection conducted on August 11, 2011, an agent from the Portland Office found that 12 consecutive issues and programs lists, from the third quarter of 2008 through the second quarter of 2011, were missing from public inspection files of each of the Stations. Pacific Empire admitted to the Portland Office that the lists were either missing or misplaced due to changes in management.¹⁵ Based on the evidence before us, we find that Pacific Empire willfully and repeatedly violated Section 73.3526(e)(12) of the Rules by failing to maintain the Stations' issues/programs lists and make them available in the Stations' public inspection files.¹⁶

6. In response to the *NAL*, Pacific Empire nonetheless requests cancellation or reduction of the \$25,000 forfeiture, first arguing that it is a "small entity" as that term is used in the SBREFA and that the Commission has never complied with its obligation under the SBREFA "to adopt a specific policy or

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *NAL*, *supra* note 2.

¹⁰ 47 C.F.R. § 73.3526(a)(2).

¹¹ 47 C.F.R. § 73.3526(c)(1).

¹² 47 C.F.R. § 73.3526(e)(12).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *NAL*, 27 FCC Rcd at 5308, para. 6.

¹⁶ As required by the *NAL*, Pacific Empire submitted a written statement, signed under penalty of perjury, stating that the Stations are now in compliance with Section 73.3526 of the Rules. See Statement of Kurt Luchs, President, Pacific Empire Radio Corporation, to the Portland Office, Western Region, Enforcement Bureau (Jun 5, 2012) (on file in EB-FIELDWR-12-00002389).

program concerning the reduction or waiver of forfeiture for small entities.”¹⁷ We find no merit in Pacific Empire’s contention. The Commission has previously held that its policies, as detailed in the *Forfeiture Policy Statement*, comply with the SBREFA.¹⁸ In particular, the Commission found that, consistent with the SBREFA, its precedent requires consideration of a small entity’s ability to pay along with any good faith efforts by the entity to comply with the law.¹⁹ In addition, the Commission confirmed its “other upward and downward adjustment factors, which are reflective of existing policy, encompass many of the conditions and exclusions listed and . . . SBREFA.”²⁰

7. Pacific Empire also argues that the proposed forfeiture amount is excessive compared to forfeitures proposed in similar cases,²¹ and out of proportion to the seriousness of the violation.²² We find no merit to Pacific Empire’s arguments. The Commission has determined that forfeitures are appropriate in cases where issues/programs lists are missing from the public inspection file, and underscored the seriousness of such violations, because “[t]hese lists enable citizens to determine whether local broadcast facilities are assessing and addressing the uniquely local concerns and issues affecting the station’s community of license.”²³ Contrary to Pacific Empire’s assertion,²⁴ a proposed forfeiture of \$25,000 to the five co-located stations, averaging \$5,000 per station, for failing to make the twelve most recent quarterly issues/programs lists for each station available for public inspection is consistent with current procedure and precedent.²⁵ As noted, the Portland Office considered several factors in its assessment of the

¹⁷ *NAL Response* at 2–3.

¹⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17109.

¹⁹ *Id.*

²⁰ *Id.* See e.g., *North County Broadcasting Corporation*, Forfeiture Order, 28 FCC Rcd 1207 (Enf. Bur. 2013) (assessment of a \$4,800 forfeiture against a small broadcaster, for failing to ensure the operational readiness of its Emergency Alert System equipment, that took into account the broadcaster’s history of compliance and ability to pay, is consistent with the requirements of the SBREFA).

²¹ *NAL Response* at 3–5.

²² *NAL Response* at 5–6. Pacific Empire also states “in January 2006 [its attorney] filed a Petition for Rulemaking (RM-11332) proposing that the Public File Rules be abolished on the grounds they serve no useful purpose.” *NAL Response* at 5. We note that the rulemaking was put on Public Notice, but that the Commission has taken no further action on the proposed rulemaking. See *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, Report No. 2772 (rel. May 19, 2006). As the Commission has declined to abolish the public file rules, the Enforcement Bureau will continue to vigorously enforce them.

²³ *Lazer Licenses, LLC*, Order on Review, 27 FCC Rcd 626, 629 (2012) (affirming an Enforcement Bureau order assessing forfeitures on three broadcast stations for failing to make available multiple issues/programs lists).

²⁴ Pacific Empire cites to 15 Notices of Apparent Liability for Forfeiture (Notices) issued by the Media Bureau on October 8, 2003, each for \$3000, concerning issues/programs list violations. We note that in each of these Notices, the issues/programs list violation was self-reported by the licensee, and that, unlike Pacific Empire, the licensee had remedied the violation prior to the report to the Commission. See, e.g., *Mel Wheeler, Inc., c/o Vincent A. Pepper, Esq.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20215 (Med. Bur. 2003) (proposed forfeiture of \$3,000 for self-reporting three issues/programs lists were not timely placed in public inspection file); *Kenneth E. Satten, Esq.*, Notice of Apparent Liability for Forfeitures, 18 FCC Rcd 20175 (Med. Bur. 2003) (proposed forfeiture of \$3,000 for self-reporting that one issues/programs list was not timely placed in public inspection file); *David Tillotson, Esquire.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20151 (Med. Bur. 2003) (proposed forfeiture of \$3,000 for self-reporting issues/programs lists were not timely placed in public inspection file).

²⁵ See, e.g., *Vision Latina Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6258 (Enf. Bur. 2012) (proposing a \$15,000 forfeiture for failing to make any issues/programs lists available for inspection); *L. Stanley Wall*, Notice of Apparent Liability for Forfeiture, 26 FC Rcd 8506 (Enf. Bur. 2011) (proposing a \$15,000 forfeiture for failing to make all but one issues/programs list available for inspection). Pacific Empire argues that the forfeiture amount proposed is inconsistent with the Enforcement Bureau’s decisions in *Daniel D. Smith*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 15874 (Enf. Bur. 2010) (*Smith*) and *James J. Chladek*, Forfeiture Order, 24 FCC Rcd 9337 (Enf. Bur. 2009) (*Chladek*). *NAL Response* at 4. We disagree. In *Smith*, the Station

proposed forfeiture amount: 1) the number of Stations involved; 2) the Stations' public inspection files were partially complete; 3) the missing issues/programs lists would have been substantially similar given the proximity of the communities served by the Stations; and 4) Pacific Empire's prior history of compliance.²⁶ As we have noted in the past, each case presents a unique set of considerations and facts, and we must review each case consistent with the statutory factors.²⁷

8. We find that the Portland Office properly considered the statutory factors concerning Pacific Empire and its Stations. Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$25,000 is warranted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Pacific Empire Radio Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 73.3526(e)(12) of the Rules.²⁸

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁹ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³⁰ Pacific Empire Radio Corporation shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³¹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be

KANR public inspection file was missing five issues/programs lists and the Bureau proposed a forfeiture of \$4,000 and in *Chladek*, the Station WXMC public inspection file was missing seven issues/programs lists. In the current case, each of the Stations' public files was missing twelve issues/programs lists.

²⁶ See, e.g., *Wilson Broadcasting, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 15963 (Enf. Bur. 2007) (affirming a forfeiture of \$4,000 for each of three co-located stations with public files missing multiple quarterly issues/programs lists). We note that Pacific Empire incorrectly states that the *NAL* determined that Pacific Empire was entitled to a 50 percent reduction for its history of compliance. See *NAL Response* at 5. The *NAL* makes no such statement and the typical reduction for history of compliance is far less than 50 percent. See, e.g., *L.R. Radio Group*, Forfeiture Order, 27 FCC Rcd 11260 (Enf. Bur. 2012) (reducing from \$10,000 to \$8,000 a proposed forfeiture for failing to make a complete public inspection file available because of the station's demonstrated history of compliance); *Joaquim Barbosa*, Forfeiture Order, 27 FCC Rcd 15334 (Enf. Bur. 2012) (reducing from \$20,000 to \$16,000 a proposed forfeiture to an amateur radio operator for unauthorized operation because of the operator's demonstrated history of compliance).

²⁷ See *Lazer Licenses, LLC*, Forfeiture Order, 28 FCC Rcd 1202, 1204 (Enf. Bur. 2013) (assessing a forfeiture of \$8,000 to one station for nine missing issues/programs lists).

²⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.3526(e)(12).

²⁹ 47 C.F.R. § 1.80.

³⁰ 47 U.S.C. § 504(a).

³¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³² If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Pacific Empire Radio Corporation, 403 “C” Street, Lewiston, Idaho 83501, and to its counsel, David Tillotson, Esquire, 4606 Charleston Terrace, NW, Washington, D.C. 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

³² See 47 C.F.R. § 1.1914.